

Motor Vehicles (Amendment) Bill, 2016

Vision Zero India-expectation vis-à-vis Reality!

The existent Motor Vehicles Act 1988 is placed for a massive facelift with the Motor Vehicles (Amendment) Bill, 2016 on table before the Parliamentary Standing Committee (PSC) on Transport, Tourism and Culture. The Bill contains 89 amendments in total where before finalisation, it went into consultative process to seek wider role of states on the Amendment Bill. A Group of Ministers (GoM) was formed with the specific mandate to board the views of states and GoM suggested 34 changes in the draft. Presently, the Bill is before the PSC, which sought suggestions and comments from all the stakeholders and had conducted extensive oral exchanges with the Stakeholders. CUTS got privilege to be invited for an oral presentation before the PSC and the suggestions were welcomed. While the report of the PSC on the Bill is still pending on the date, and the Bill might be considered in the Winter Session of Parliament.

The draft Bill aims to “address the issues relating to road safety, citizen facilitation, strengthening public transport, automation and computerisation”.

With the lapse of the Road Transport and Safety Bill, 2014, legislative reforms in the road transport sector were not only required but desired. With increasing cases of road accidents, delay in issue of driving licences, the disregard of traffic rules and regulations etc. ushered the demand for improved road safety and transport system, and thus amendments are required to be made urgently in the Motor Vehicles Act, 1988 to address safety and efficiency issues in the transport sector.

The Bill at a Glance

Highlights

- ◆ Emphasis on road safety conforming to Brasilia declaration and commitment to reduce the number of road accident fatality by fifty percent by the year 2020
- ◆ National Transportation Policy to be framed in consultation with State Governments
- ◆ Recall of motor vehicles by Central Government for defect may cause damage to the environment, or the driver, or other road users
- ◆ Manufacturers accountability and penalty for defect
- ◆ Creation of a motor accident fund for immediate relief to accident victims
- ◆ Scheme for cashless treatment of road accident victims during golden hour
- ◆ Definition of a good Samaritan and their protection from legal hassles
- ◆ Computerisation of certain services, such as online licencing system
- ◆ Removal of minimum education qualification as a license condition
- ◆ Flexible permit system for passenger transport and simplified permits for freight
- ◆ National Register of Driving Licences formed for centralisation of data and State Registers of Driving Licences to be subsumed under it
- ◆ State Governments to regulate activities in public places, and in non-motorised transport (bicycles, cycle rickshaws) and
- ◆ Inclusion of liability and penalties of juveniles

Lowlights

- ◆ Lack of robust data collection and scientific investigation of road crashes
- ◆ No provision for accountability for road contractor and officials for poor road design and maintenance
- ◆ Limit on Insurer's liability in third party motor accidents
- ◆ Ambiguity on provision on child restraints
- ◆ No reduction in BAC level for novice drivers and
- ◆ High penalties can be counterproductive in the Indian context and promote rent seeking corruption

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Introduction

Presently, India is facing an alarming situation by becoming a world leader in highest number of road accidents in the world. With only 2 percent of the global motor vehicle population, the country accounts for more than 10 percent of those fatalities. With one fatality roughly happening every 4 minutes, Indian roads are considered some of the most dangerous roads in the world.

It is a tragic paradox that India being a signatory to the Brazilian Declaration is committed to reduce the number of road accident fatalities by 50 percent by the year 2020¹ but, the road accidents in the country are showing an increasing trend with an increase of 2.5 percent in 2015, a rise of 4.6 percent in road accident fatalities and 1.4 percent in injuries.² The reasons attributable are multi-faceted which are both fault-based or not fault-based, viz., speeding, drunk driving and low use of helmets, seat belts and child restraints in vehicles, the absence of coordinated evidence-based policy to control the problem.

The draft Motor Vehicle (Amendment) Act, 2016 seeks to bring comprehensive changes to the age-old Motor Vehicles Act, 1988. It presents a paradigm shift from mere regulatory processes of governing the movement and operation of motor vehicles, to proactively safeguarding the interests of all road users and stringent liabilities for violators.

The Act proposes to facilitate grant of online learning licence, to replace the existing provisions of insurance, to enable the States to promote public transport, rural transport and last mile connectivity by relaxing any of the provisions of the Act pertaining to permits; to increase the fines and penalties for violation of provisions of the Act and to make a provision for

protection of good Samaritans. A remarkable effort has been made in the passenger transportation, by breaking the public sector monopoly which will boost the competition in the road transport, dismount the burden on public exchequer and ensure quality transport to public.

The Bill, 2016 is a praiseworthy effort in the direction of Road Safety after the ill-fate of Road Transport and Safety Bill, 2014. Although the Bill contains several noteworthy provisions, which seek to ensure road safety, but certain provisions, like limit on third party insurance is backsliding. The stringent penalties proposed for various traffic violations and offences are noteworthy, but it is reckoned that due to inadequate enforcement and corrupt practices these penalties might be used as a means of extortion in the hands of unscrupulous authorities.

Accountability of road contractors and agencies, road standards, traffic infrastructure are few grey areas that need to be brought under the ambit of the legislation. On a whole, the ambition of the Bill is hinging on firm grass root implementation, multi-disciplinary approach and strong capacity building amongst all stakeholders of road safety.

The section below discusses some of the key areas under the draft Bill, which call for a more informed consideration.

Discussion

i. Motor Vehicles Act not a code on road safety

The Motor Vehicles Act is an Act initially dedicated to regulation of Motor Vehicles, with 25 to 30 percent provision dedicated to road safety. The Bill is well drafted to give a holistic approach but amendments to other important provisions on transportation, permits, enhancing

competition and insurance capping are other provisions where amendments have been made.

In light of the amendments, the path towards road safety has been paved, but the Act is limited to its intended purpose of regulating motorised transport, it is desirable to have a specific legislation on the subject of road safety as earlier framed under the Road Transport and Safety Act, 2014.

ii. Provision on scientific investigation of road crashes

Under the extant legal framework, road accidents are to be reported in a manner similar to reporting of any other offence, i.e. a First Information Report (FIR) by the police. It is an inadequate indicator of the cause of a road crash, as it does not capture the various human, infrastructural, and vehicular factors that play a vital role in road crash.

The Bill proposes a new provision Section 135 (3) empowering the Central Government to frame a scheme for in-depth study of motor vehicle accident, way-side amenities, traffic and posts and truck parking complexes. The Bill seeks to transfer the power from State to the Central Government, which affects the legislative powers of the State in this regard.

Essentially, Communications, such as roads, police, public health are subject matter of State Lists, thus retaining power and procedure of collection and scientific data will be more practicable, supervisory role to the Central Government for maintaining a national registry might harmonise the distribution of power among governments.

With a view to ensure accurate and reliable collection of data on road accidents and scientific investigation

thereon, it is suggested to incorporate a new provision to empower the State Government to prescribe by rules a suitable form and manner of reporting, recording and investigating of road accidents.

Countries like the US, Germany, Sweden, Singapore and Japan have established robust data collection systems not just to ascertain the causes of crashes, but also to track their effects on the victims through a national trauma registry. In Cambodia, the road crash and victim information system combine data collected from both the police as well as the hospitals.³

Thus, a holistic approach of understanding the cause of crash taking into account drivers' faults, road conditions as well as any other external causes for crashes is important to further investigation and take appropriate safety measures in this regard.

iii. Fixing accountability for faulty road designs

The extant Motor Vehicles Act, 1988 is silent on fixing accountability for road accidents that are caused due to poor road design and maintenance. Thus under the present legal framework, nabbing road contractor or an engineer for their wilful negligence is very difficult. In fact, Sec 28 of the National Highways Authority of India Act, 1988 absolves the liability of its officials by stating that no action can be taken against them for work carried out in 'good faith'.

In line of the statement, we suggest inserting a section on safe road design engineering and construction standards and that culpability of road contractors, road authorities and its officials be fixed and be brought under the ambit of the proposed amendments. Penalising the

contractors and officials with civil or criminal liabilities for death or grievous injury caused due to poor road design or engineering will help ensure an accountability framework along with improving the quality of roads, *per se*.

iv. Motor Vehicle Accident Fund

Section 164 B seeks to create the Motor Vehicle Accident Fund, which will compulsorily cover all road users. The Fund is to be utilised for giving immediate relief to victims of motor accidents, and also hit and run cases. It will provide compulsory insurance cover to all road users in India. The Fund will be credited with: (i) a cess or tax as approved by the Central Government, (ii) a grant or loan made by the Central Government, or (iii) any other source as prescribed the Central Government.

The compensation paid out of the fund shall be deductible from the compensation, which the victim might get in future from the Tribunal. However, the downfall of the provision is that it imposes a new tax on the public rather than providing for a provision on channelising the penalty amount, the amount collected from *challan* to be compensating the victims of road accidents. Also the provision does not specify the any authority in charge of the same.

v. State's power to waive condition for stage carriage permit

The proposed proviso to sub-section (2) of Section 72 allows the State Governments to waive any condition for a stage carriage permit operating in a rural area. These conditions also include the maximum load or the maximum number of passengers that may be carried on a stage carriage.

Waiving of any conditions prescribed in Section 72 could result in

overloading of stage carriages with passengers and/or goods, directly affecting the safety of road users in rural areas, thus *proviso* should be omitted.

vi. Provision on traffic calming measures

The Brasilia Declaration highlights strategies to ensure the safety of all road users, particularly by improving laws and enforcement; making roads safer through infrastructural modifications; ensuring that vehicles are equipped with life-saving technologies; Traffic calming measures, like road designed to automatically control excessive speeding like speed breakers to contain rash driving on green light and signal jumping, will adequately impact road safety. In the context of shared road space, traffic calming measures would mean fewer crashes and fatalities for not only car users, but for pedestrians and other road users as well.⁴

The present draft, however, under S. 137 (1A) empowers the state government to make rules to regulate non-motorised traffic it is suggested that a new provision in the Act be added to empower the appropriate Government to formulate a regular calendar of identification and rectification of black spots along with the monitoring mechanism on National and State highways⁵, as the case may be.

vii. Guidelines protection of children during commute

The proposed amendment to Section 129 provides to exempt children below the age of 4 years to wear headgears. It is advised that this exemption to children below 4 years be replaced with a provision issuing guidelines for safety measures to be followed while commuting with child below 4 years of age. Given our sociocultural and economic norms

two wheelers are usually used to transport young children, which are placed in the front or in between two adults without any protective headgear.

The issue of commute of children on two wheelers, including non-motorised vehicle needs to be addressed separately by insertion of new section. On the issue of child restraint in four wheelers, the Bill states that the Central Government 'may' frame guidelines in this regards.

Thus, it is proposed that the Government should within a reasonable time frame mandatorily draft guidelines for mandatory use of child restraints for children less than 14 years of age rather than the option of seat belts or child restraints as currently mentioned in the bill and penalty for violation of the same.

Furthermore, defining what constitutes a child restraint, for example by referring to international standards will provide a concrete basis for implementation of the same. It is further suggested that requiring child restraints for children up to a specific weight and/or height rather than an age will be rational move in child safety measures.

Children in an appropriate restraint for their size and weight are significantly less likely to be killed or injured than unrestrained children. For instance, rear-facing restraints for children aged 0 to 23 months have been shown to reduce the risk of death or injury by over 90 percent and forward facing child restraints by almost 80 percent compared to being unrestrained.⁶

viii. Addition of Blood alcohol content regulation

We suggest reducing BAC levels for novice or young drivers to 20 mg per 100 ml in order to meet (WHO) best practices. Provision to establish lower BAC limits (d"0.02 g/dl) for novice or young drivers can lead to reductions in the number of crashes involving young people of up to 24 percent. As per the current standards, BAS level is set at 30 mg. per 100 ml. of blood. We also propose permission of random stops for testing sobriety and make post-crash testing for alcohol or for breaches of other traffic offenses mandatory rather than optional.

ix. Omitting insurer's liability in third party motor accidents

The proposed amendment importantly seeks to include provision for payment of compensation up to 10 lakh in road accidents fatalities. The compensation that is paid to the victims, depend on numerous factors, such as medical expenses, loss of income, disability, expenses for future treatment, etc., will now have to be shared by the insurance company and the insured vehicle owner.

There is presently no restriction or sealing on the compensation payable by the insurance companies. The provision will afflict self-owned vehicles. Despite the option to move to the claim tribunal in case of non-compensation, the vehicle owner will have no effective remedy, due to the upper cap.

Currently, the amount of compensation is decided upon by the Tribunal based on factors such

as the age, dependency, income of the victim in case of fatal accidents and based on the nature of injuries and medical expenses in cases of grievous hurt, to be paid by insurance companies. The amount awarded in previous cases has been even up to 50 lakh. We suggest that the proposed amendment should be omitted.

x. Strengthening the licensing system

In the proposed amendments to Section 9, 12 and 14 it is suggested for prescribing mandatory training for all licence holders and competence test at the office of licencing authority. To elucidate further, it is suggested that a provision be incorporated along with driving certificate issued by a school or establishment an applicant shall undergo a mandatory test of competence at the licencing centre under expert guidance, in a manner prescribed by the Central Government.

It is appurtenant to state that the provision of obtaining learner's licence be further strengthened by adding restricting provisions, such as to restrict novice drivers and learners to drive on highways at once after their training rather gradually induction process onto highways and traffic areas will be beneficial. The suggestion assumes importance, especially in light of e-licensing system, as introduced.

xi. Rationalisation of penalties

With regard to traffic violations, most developed countries like the US and Australia practice a graduated penalty system. Under

this system, fines are increased with each repetitive offence and based on the relative severity of the offence, with the final penalty being a loss of one's driver's license.⁷ In developing countries, such as Brazil, offences like over speeding result in a 7-point loss of the license system, and a fine of ₹4040⁸. Similarly, in Russia, the fine for drunk driving ranges from ₹30, 000 to 300,000⁹.

A graduated penalty system will not only help mitigate the violations but will also enhance the awareness scale among public and will be deterrent against repeat cases of violation. Adding further, Introduction of Academically, this aptly justifies the rationale behind progressive penalties with frequency of offence. However, practically, there is an intense need for unswerving enforcement on roads not only to promote deterrence but also to discourage the penalty amount being pocketed by unscrupulous traffic policemen.

xii. Overlapping powers of Governments

Under the provisions of the Bill, at many a places the rule making of the Centre overlaps with that of the State, such as Section 315A that provides rule making power of centre is verbatim same as rulemaking of State under Section 315B. These provisions not only create chaos but would might dilute the legislating, competence and powers of the states and also lead to ambiguity in implementation of rules under the Act.

It is quintessential to maintain a federal feature to the Bill where states are treated as co-operative partners in Road Safety will ensure efficient enactment of the Bill and smooth implementation of it.

Conclusion

Road Transport like other Transport sector is an intricate sector requiring momentum from all knowledge sectors, from technical expertise to economics of roads and road transport, from mass awareness to well-articulated political will. The intention behind the Amendment Bill is high-principled. It is important to note that the Motor Vehicle Act, 1988 contain limited provisions on road safety and apparently is an overreach attempt to make good for the loss of the Road Transport and Safety Act, 2014.

In order to realise the ambition of 'Vision Zero' India, the quintessential lies in consensus and coordination at national and state level and induction of a coherent enforcement mechanism is *sine qua non*. The concept of road safety is rather dynamic thus convergence of technical expertise coupled with economic viability is essential for the initiatives proposed under the Bill. For example, institutional set-ups for National Transport Policy, or proposed scheme for cashless treatment, computerisation of certain services require wide-ranging investments in infrastructure and regulatory mechanism.

In addition to the above, funding of road safety requires substantive and sustainable investment and infrastructural model in order to promote Research and Development in road safety, awareness and education of road users on road manners, etc. A possible inflow can be done through allocation of a proportion of amount collect through penalties, taxes and *challans* towards road safety initiatives.

Furthermore, it is important to study the international best practices in road safety, such as for road designs techniques, traffic calming measures, child restraint system, but is equally necessary that the best practices must be analysed on the accessibility, achievability and affordability in local conditions and contexts. India is a diverse nation in terms of geography and state specific needs, thus the road safety parameters need a closer look.

In unequivocal terms, 'road safety' education and awareness need consistent and measured implementation and the cooperation of civil societies for effective implementation of law on ground and promoting road behaviour and discipline.

To conclude, for effective enactment of the Bill, several provisions need to be honed and made flexible for vicissitudes of time. The Bill integrates sustainable principles into our transport and development policies, which will in turn exert significant impact on the road safety scenario.

The instance analysis is an attempt to understand, appreciate and suggest areas of development in road safety legislation for a detailed insight and imitate deliberations that expand actions for grass-root implementation.

One of the main goals of regulation is to induce firms to offer efficient services at the lowest possible costs. Given the growing use of Public-Private Partnership (PPP) contracts particularly in road transport, a key function of the regulator, will be to ensure compliance with the PPP contracts and handle disputes.

A step in the right direction is the creation of State Transport Development Authority. This would aid in better and more efficient implementation of the legislation – taking into consideration the local context and conditions. This should be complemented by a well-laid out and clear-cut system for agencies to cooperate with the national authority.

Legislating ‘road safety’ education and awareness is in line with the suggestions made by experts and scholars – and needs to be implemented consistently through campaigns and other awareness raising activities.

In conclusion, it is evident that there are several sections of this Bill that need to be refined before it is enacted. The above analysis presents some of these areas, especially pertaining to passenger transport, for an informed discussion and enables the actions forward.

Action Points

- Compulsory data management of road accidents victims at all trauma centres like by establishing control room and training programmes for ambulance staff, trauma centres and traffic policemen
- Mandatory condition for motor vehicle companies to assure installation of child restraint system during purchase of motor vehicle
- Introducing graduate penalty system
- Enable independent, in-depth policy research by relevant stakeholders
- Promoting competition in passenger transport be incorporated to encourage private participation by framing appropriate policies on enhanced competition.
- Allocation of funds collected through penalties, *challans* and taxes for road safety research and campaigns and
- Scheme for disbursement of reimbursement from motor vehicle manufacturer to the buyer

Endnotes

- 1 Brasilia Declaration on Road Safety, 2nd Global High Level Conference on Road Safety, Brasilia, Brazil, 18-19 November 2015. Available at http://www.who.int/violence_injury_prevention/road_traffic/Brasilia_Declaration/en/
- 2 *Road Accidents in India 2015 report*, Transport Research Wing, Ministry of Road Transport and Highways <http://pibphoto.nic.in/documents/rlink/2016/jun/p20166905.pdf>
- 3 Cherian, Saji, “Making our roads safe” *The Hindu*, August 8, 2016, Opinion. Available at, <http://www.thehindu.com/opinion/op-ed/saji-cherian-on-making-our-roads-safe/article8955841.ece>
- 4 <http://thecityfix.com/blog/india-cant-afford-lose-more-lives-due-road-crashes-fatalities-amit-bhatt/>
- 5 Recommendation of Supreme Court Committee on Road Safety
- 6 World Health Organization, Global Status Report on Road Safety, 2015
- 7 Department of Motor Vehicles: <http://www.dmv.org/point-system.php> and NSW Government (2014) ‘Australian Graduated Licensing System’
- 8 The Brazil Business. (2013). <http://thebrazilbusiness.com/article/traffic-penalties-in-brazil>
- 9 Global Legal Monitor. (2014). <http://www.loc.gov/law/foreign-news/article/russia-stricter-punishment-for-drunk-driving-speeding/>

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